Mercer Law Review

Volume 73
Number 1 *Annual Survey of Georgia Law*

Article 19

12-2021

Wills, Trusts, Guardianships, and Fiduciary Administration

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This Article discusses significant cases decided by the Georgia Court of Appeals during the period of June 1, 2020, through May 31, 2021, pertaining to Georgia fiduciary law, guardianship, and estate planning.[1] This Article also describes the highlights of legislation contained in a comprehensive bill that revised and clarified the laws relating to wills, trusts, and the administration of estates and that became effective January 1, 2021.[2]

I. GEORGIA CASES

A. Latent Ambiguities in Wills

In *Luke v. Luke*,[3] the Georgia Court of Appeals vacated the Ben Hill Superior Court's finding that certain provisions in a will were unambiguous and remanded the case for an examination of parol evidence in order to discern the testator's intent.[4] The will devised the testator's share in the "'Andrew W. Luke Irrevocable Trust'" to her son

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1. For an analysis of Wills, Trusts, Guardianship, and Fiduciary Administration law during the prior Survey period, *see* Mary F. Radford, *Wills, Trusts, Guardianship, and Fiduciary Administration*, *Georgia Survey,* 72 MERCER L. REV. 327 (2020).

2. Ga. H.R. Bill 865, Reg. Sess. (2020).

3. 356 Ga. App. 271, 846 S.E.2d 216 (2020).

4. *Id.* at 273, 846 S.E.2d at 219.

even though no such trust existed.[5] There was, in fact, an "'Andrew W. Luke Revocable Trust'" [6] in existence, but the testator was not a beneficiary of that trust. The court of appeals pointed out these were latent ambiguities because they became apparent only when the words of the will were put into operation.[7] As to the first problem—the misnamed trust—the court of appeals agreed with the trial court that this may have only been a scrivener's error in referencing the non-existent Irrevocable Trust, as opposed to the Revocable Trust.[8] However, the court of appeals found the second problem to be more serious, holding that portion of the will "cannot be put into operation without resolving that ambiguity."[9] The court of appeals went on to note that, to resolve an ambiguity in a will, "parol evidence of all of the facts and circumstances respecting persons and property to which the will relates are admissible as legitimate evidence to show the intention and application of the words used."[10] Thus, the trial court must hear parol evidence before ruling on the testator's intent because Item Four contained a latent ambiguity. Accordingly, the appellate court vacated the trial court's order and remanded the case with direction.[11]

B. Presumption that the Will Was Validly Executed and Attested

Georgia law requires a testator either sign the will in the presence of two witnesses or acknowledge his or her signature to the witnesses.[12] In the case of *In re Estate of McLendon,*[13] the witnesses, who had signed the will ten years prior to the testator's death, could not remember the exact circumstances surrounding their signing of the will.[14] When a petition was filed to admit the will to probate, the witnesses' testimony at the hearing in the Bartow Probate Court was "contradictory." One witness testified he did not remember whether the testator had already signed the will when the witness signed it. However, this same witness also

5. *Id.* at 273, 846 S.E.2d at 218.

6. *Id.*

7. *Id.* at 272–73, 846 S.E.2d at 218. The difference between latent and patent ambiguities is discussed in Mary F. Radford, REDFEARN WILLS & ADMINISTRATION IN GEORGIA § 7:10 (2019–2020 ed.), which was quoted by the court of appeals.

8. *Luke*, 356 Ga. App. at 273, 846 S.E.2d at 218.

9. *Id.* at 273, 846 S.E.2d at 218–19.

10. *Id.* at 273, 846 S.E.2d at 219 (quoting Legare v. Legare, 268 Ga. 474, 476, 490 S.E.2d 369, 371–72 (1997)).

11. *Id.*

12. O.C.G.A. § 53-4-20 (2021); Waldrep v. Goodwin, 230 Ga. 1, 3–4, 195 S.E.2d 432, 434 (1973).

13. 359 Ga. App. 259, 857 S.E.2d 268 (2021).

14. *Id.* at 260, 857 S.E.2d at 269.

testified the testator had not signed the will when he (the witness) signed it. The second witness testified he only remembered signing the will and did not remember whether there were any signatures on it when he signed it. But he also testified he had not seen any signatures. The probate court admitted the will to probate even though the caveators had argued the testator had neither signed the will in the presence of the witnesses nor acknowledged his signature to them.[15]

The Georgia Court of Appeals affirmed the probate court's application of the presumption of validity.[16] The probate court and the court of appeals cited *Glenn v. Mann*[17] for the proposition that "[w]here a witness fails to remember events surrounding the will's execution, there is a presumption, given proof of the signatures appearing on the will, that all was done as the law requires."[18] The court of appeals held despite the contradictory testimony, there was "some evidence [to] support[] the probate court's finding that the witnesses did not remember the formalities of execution and attestation[,]" and thus the court of appeals would uphold the probate court's conclusion that the testimony did not overcome the presumption of validity.[19]

C. In Terrorem Clauses in Trusts

During the reporting period, the Georgia Court of Appeals handed down two cases that examined the effect of *in terrorem* clauses. Both cases involved disputes among siblings. *In terrorem* clauses are clauses in wills and trusts designed to discourage vexatious litigation by providing a person who unsuccessfully challenges the validity of the will or trust will forfeit any interest that person would otherwise take under the will or trust.[20]

Legislation that became effective on January 1, 2021, clarified *in terrorem* clauses are not enforceable if the challenger's claim is one for "interpretation or enforcement of the will; . . . an accounting, for removal, or for other relief against a personal representative;" or who is "entering

15. *Id.*

16. *Id.* at 261, 857 S.E.2d at 269–70.

17. 234 Ga. 194, 214 S.E.2d 911 (1975).

18. *McLendon*, 359 Ga. App. at 260, 857 S.E.2d at 269 (quoting *Mann*, 234 Ga. at 198, 214 S.E.2d at 915–16).

19. *Id.* at 261, 857 S.E.2d at 269–70.

20. *See* Mary F. Radford, GEORGIA TRUSTS AND TRUSTEES § 2:1(A) (2020–2021 ed.) for a definition and discussion of *in terrorem* clauses in trusts.

into a settlement agreement."[21] In *Barry v. Barry*,[22] the Georgia Court of Appeals affirmed the Union Superior Court's finding that a purported petition to "seek an accounting" was in reality litigation that was designed to contest the authority of the personal representative/trustee and thus was a violation of the *in terrorem* clauses contained in the challenger's father's will and a trust set up by her parents.[23] Consequently, the testator's daughter, Cynthia Barry (Cynthia), forfeited her beneficial interests in both the will and the trust. Cynthia's brother, Thomas Barry (Thomas), was named as personal representative in the will and as trustee of the trust. Basically, the will and trust equally distributed the parents' assets among Cynthia, Thomas, and another sibling. The trial court enumerated a series of actions by Cynthia that the court found were indicative of her desire to "gain control of her father's estate."[24]

Although Thomas lived in Maine, and was caring for an ailing wife, he managed within ninety days to produce a preliminary accounting and valuation of the assets and liabilities of the estate.[25] However, when he sought to hire a lawyer in the father's small hometown to help with the probate of the estate, the two local attorneys he contacted informed him that they could not take the case. Cynthia had contacted both lawyers and even though she did not hire either, she gave them enough confidential information to create a conflict of interest, which she refused to waive. The will and trust gave Thomas unfettered discretion to value, sell, and distribute estate assets in cash or in kind.[26] Thomas made several attempts to seek Cynthia's input in dealing with the estate, even after she sued him. Cynthia refused to open an account to hold her share of estate stock; she did not cooperate in setting a time to divide the father's personal property; she hired her own appraiser to appraise the father's residence and insisted that the professional appraisal Thomas

21. Ga. H.R. Bill 865 § 1-15 (amending O.C.G.A. § 53-4-68). The 2021 Amendments added the same provision to the statute relating to *in terrorem* clauses that appear in trusts. Ga. H.R. Bill 865 § 1-74 (amending O.C.G.A. § 53-12-22).

22. 357 Ga. App. 479, 851 S.E.2d 119 (2020).

23. *Id.* at 479–81, 851 S.E.2d at 120–21.

24. *Id.* at 480, 851 S.E.2d at 121. After Cynthia's mother died in 2011, Cynthia contacted the law firm her father had retained to assist with the Trust and asked them about having her father declared incompetent. (Her father lived for another four years, and there was never any evidence that he was incompetent.) Cynthia, a Florida lawyer, demanded confidential information from the firm and, when they refused, threatened litigation by demanding to see their malpractice insurance policy. When the father died in November 2015, Cynthia immediately began threatening litigation against Thomas, her sister, and her niece. *Id.*

25. *Id.* at 482, 851 S.E.2d at 121–22.

26. *Id.* at 481, 851 S.E.2d at 121.

had gotten was inadequate. For a year, she refused to respond to Thomas's request for input as to whether she wanted an in-kind or cash value distribution of stock and then complained that he had breached his fiduciary duty in selling the stock.[27]

The trial court concluded that Cynthia's actions were brought "with malice, without substantial justification, [and] in bad faith[.]"[28] More importantly, the trial court concluded—and the court of appeals agreed—that Cynthia had, in effect, contested the will provisions, instituted a proceeding to prevent the will from being carried out according to its terms,[29] and "at least indirectly" contested the trust provisions that named Thomas as trustee and gave him the broad authority to value, manage, and divide the trust assets.[30] These actions constituted violations of the *in terrorem* clauses in the will and the trust. Cynthia's contention that she had merely been petitioning for an accounting was dismissed, with the court of appeals stating "neither the trial court nor this Court is confined by the nomenclature used in any particular cause of action, nor will we turn a blind eye to one's actual intent."[31]

The case of *Giller v. Slosberg*[32] arose in the context of a contentious relationship between a brother and his two sisters.[33] A jury entered a verdict in favor of the brother on the charge that the sisters had unduly influenced their father in making beneficiary designations in an individual retirement account (IRA), an agency account, and a trust.[34] The trust contained an *in terrorem* clause that provided the interest of any person who challenged the validity of the trust would be "revoked and annulled."[35] In their appeal, the sisters did not challenge the jury's findings that they had exerted undue influence but instead claimed, among other things, the *in terrorem* clause in the trust precluded the brother from receiving any of the trust assets.[36] In a split decision,[37] the Georgia Court of Appeals held the brother's actions in initiating the lawsuit violated the *in terrorem* clause in the trust and thus he was not

27. *Id.* at 438–84, 851 S.E.2d at 122–23.
28. *Id.* at 484, 851 S.E.2d at 123.
29. *Id.* at 485, 851 S.E.2d at 123.
30. *Id.* at 487, 851 S.E.2d at 125.
31. *Id.* at 486, 851 S.E.2d at 124.
32. 359 Ga. App. 867, 858 S.E.2d 747 (2021).
33. *Id.* at 867, 858 S.E.2d at 749.
34. *Id.* at 867–68, 858 S.E.2d at 749–50.
35. *Id.* at 870–71, 858 S.E.2d at 751.
36. *Id.* at 869, 858 S.E.2d at 750.
37. The majority opinion was written by Senior Appellate Judge Phipps and joined by Judge Rickman. Chief Judge McFadden wrote a dissenting opinion. *Id.* at 867, 858 S.E.2d at 749.

entitled to any of the trust assets.[38] The majority opinion claimed it was strictly construing section 53, chapter 12, section 22(b) of the Official Code of Georgia Annotated (O.C.G.A.), which does not include language stating, if a trust is invalid, the *in terrorem* clause is inoperable.[39] Chief Judge McFadden, writing in dissent, stated when the trust itself was declared invalid, "[t]he in terrorem clause falls along with the rest of the instrument."[40] He pointed out the majority was trying to "animate stillborn instruments."[41] He clearly disapproved of the majority's conclusion, stating:

> There appear to be no previous cases in which our appellate courts have faced the audacious claim the appellants make here: even though they have been found to have procured the trust before us by means of undue influence and do not contest that finding, they nevertheless claim to be fully entitled to all of their ill-gotten gains.[42]

The decision in this case is clearly wrong for the reasons set forth in Chief Judge McFadden's dissenting opinion. The court of appeals also held that the superior court had no authority to impose a constructive trust on the amounts in the IRA and agency accounts.[43] It reasoned because neither the jury nor the superior court had made a finding of "unjust enrichment," the superior court's only authority was to declare these accounts invalid, thus causing the monies in the accounts to become part of the father's estate.[44] Again, it is difficult to fathom why the majority did not conclude when property is gained through the exercise of undue influence, it clearly results in unjust enrichment.

D. Interaction between Guardianship Statute and Estate Administration Statute

The case of *In re Estate of Brown*[45] explored the interaction between a statute in Title 53 of the O.C.G.A.,[46] which covers generally wills and the administration of decedents' estates, with a statute in title 29,[47] which covers guardianships and conservatorships. In 2011, the Fulton County

38. *Id.* at 870, 858 S.E.2d at 750–51.
39. *Id.* at 870, 858 S.E.2d at 751.
40. *Id.* at 877, 858 S.E.2d at 755 (McFadden, C.J., dissenting).
41. *Id* at 878, 858 S.E.2d at 756 (McFadden, C.J., dissenting).
42. *Id.* at 880, 858 S.E.2d at 757 (McFadden, C.J., dissenting).
43. *Id.* at 876–77, 858 S.E.2d at 755.
44. *Id.* at 877, 858 S.E.2d at 755.
45. 357 Ga. App. 869, 850 S.E.2d 503 (2020).
46. O.C.G.A. tit. 53 (2021).
47. O.C.G.A. tit. 29 (2021).

administrator and conservator (Fulton County administrator)[48] was appointed conservator[49] of Leon Brown by the Fulton County Probate Court.[50] When Brown died intestate in 2019, the Fulton County probate court appointed the same county administrator as *ex-officio* administrator of Brown's estate, pursuant to O.C.G.A. § 29-5-72(g).[51] This Code section provides in pertinent part as follows: "When a ward for whom the county administrator or county guardian has been previously appointed as conservator dies intestate, the conservator shall proceed to distribute the ward's estate in the same manner as if the conservator had been appointed administrator of the estate."[52]

Brown's daughter and other heirs objected to the appointment because Brown had been domiciled in Henry County when he died and thus the Henry County Probate Court had jurisdiction over the appointment of the administrator of his estate.[53] The daughter relied on O.C.G.A. § 53-6-21(a),[54] which requires a petition for letters of administration to be filed in the county in which the decedent was domiciled at death. A petition to administer Brown's estate had been filed in Henry County, but the probate court of Henry County dismissed the petition because the Fulton County administrator had been serving as Brown's conservator when he died.[55]

The Georgia Court of Appeals based its analysis on the maxim that a "'specific statute will prevail over a general statute, absent any indication of a contrary legislative intent.'"[56] The court opined the statute relied

48. O.C.G.A. § 53-6-35 requires the probate judge of each county in Georgia to "appoint a county administrator whose duty shall be to take charge of all estates unrepresented and not likely to be represented." O.C.G.A. § 29-8-1 provides that the county administrators are "ex officio county guardians and shall serve as guardians or conservators in all cases where appointed by the court." "County guardians typically serve as conservators rather than guardians. However, the term 'county guardian' was maintained in the Revised [Georgia Guardianship] Code due to its long-standing use in Georgia." *See* Mary F. Radford, GEORGIA GUARDIANSHIP AND CONSERVATORSHIP § 8:1 (2020–21 ed.). The court of appeals in the *Brown* case used the term "county administrator and conservator."

49. A conservator is a person who is appointed by the probate court to manage the property of a minor or an adult who has been found to be incapable of managing his or her property. O.C.G.A. § 29-5-1(a) (2021). Conservatorships of adults are discussed in Mary F. Radford, GEORGIA GUARDIANSHIPS AND CONSERVATORSHIPS Ch. 5 (2020–2021 ed.).

50. *Brown*, 357 Ga. App. at 869, 850 S.E.2d at 503–04.

51. *Id.* at 869, 850 S.E.2d at 504.

52. O.C.G.A. § 29-5-72(g) (2021)

53. *Brown*, 357 Ga. App. at 870, 850 S.E.2d at 504.

54. O.C.G.A. § 53-6-21(a) (2021).

55. *Brown*, 357 Ga. App. at 870, 850 S.E.2d at 504.

56. *Id.* at 850 S.E.2d at 504 (quoting *Williams v. State*, 299 Ga. 632, 634, 791 S.E.2d 55, 56–57 (2016)).

upon by the Fulton County administrator was a "specific statute" (in that it "applie[d] only when the county administrator or county guardian ha[d] been appointed conservator and the ward dies intestate") while the statute upon which the daughter relied was a "general statute" (in that it applied to "[e]very petition for letters of administration[]").[57] The court of appeals ruled the specific statute prevailed. Additionally, it noted the specific statute had been enacted later in time (2006) than the general statute (1997) and that the legislature was presumed to know "the condition of the law and to enact statutes with reference to it, . . . the provisions of the statute enacted latest in time carry greater weight."[58]

II. GEORGIA LEGISLATION

A. Overview of the Legislation

In June 2020, the Georgia General Assembly enacted sweeping legislation pertaining to wills, trusts, and the administration of estates.[59] The bill was signed into law by the Governor on July 29, 2020, and the new provisions became effective on January 1, 2021.[60] Highlights of the new legislation are described below. The new legislation will be referred to hereinafter as the 2021 Amendments. As will be noted, while several of the provisions of the 2021 Amendments contain substantive changes or new additions to the Georgia Code, others are simply clarifications or codifications of existing law.

B. Amendments Relating to Probate Court Jurisdiction

Under Article VI, Section III, Paragraph I of the Georgia Constitution, probate courts in Georgia "shall have such jurisdiction as now or hereafter provided by law[.]"[61] While most probate courts in Georgia have limited jurisdiction, O.C.G.A. § 15-9-120(2)[62] provides probate courts in the counties that have a population of at least 90,000 and in which the probate judge has been admitted to the practice of law for at least seven

57. *Brown*, 357 Ga. App. at 870–71, 850 S.E.2d at 504.

58. *Id.* at 871, 850 S.E.2d at 504 (quoting *Williams*, 299 Ga. at 634, 791 S.E.2d at 56).

59. Ga. H.R. Bill 865.

60. *Id.* at § 3-1.

61. GA. CONST. art. VI, § III, para. I. The subject matter jurisdiction of Georgia probate courts is discussed in Mary F. Radford, REDFEARN WILLS & ADMINISTRATION IN GEORGIA § 6:3 (2020–2021 ed.).

62. O.C.G.A. § 15-9-120 (2021); O.C.G.A. § 15-9-120(2) defines these counties as those that have a population of 90,000 or more and in which the probate judge has been admitted to the practice of law for at least seven years. Parties to civil cases in these probate courts may demand a jury trial. O.C.G.A. § 15-9-121 (2021).

years, have concurrent jurisdiction with the superior courts over a variety of matters over which the other probate courts have no authority.[63] The 2021 Amendments expanded this list to include the adjudication of matters related to trusts, trustees, and trust directors[64] as well as the construction of trust instruments.[65] Because trusts are traditionally "subjects of equity jurisdiction[,]"[66] the 2021 Amendments added subsection (b) to O.C.G.A. § 15-9-127, which allows these probate courts with expanded jurisdiction, among other things, to "[a]pply equitable principles."[67]

The 2021 Amendments also added the adjudication of matters relating to power of attorney[68] to the list of matters over which the probate courts with expanded jurisdiction have authority.[69] A power of attorney is a legal mechanism which allows an individual (the principal)[70] to appoint another person (the agent)[71] to act for the principal in matters relating to the principal's property. Actions by the agent bind the principal in the same manner as if the principal had acted.[72] O.C.G.A. § 10-6B-16 allows a variety of persons to "petition a court to construe a power of attorney or to review" the conduct of the agent who has been appointed by the principal.[73] O.C.G.A. § 10-6B-40(a) lists certain powers that an agent may exercise only if given express authority by the principal to do so.[74] O.C.G.A. § 10-6B-40(i) allows an agent who has not been given this authority to petition a court to exercise such a power.[75] The 2021

63. O.C.G.A. § 15-9-127(a) (2021).

64. Ga. H.R. Bill 865 § 2-22(a)(4) (amending O.C.G.A. § 15-9-127(a)(4) (2021)).

65. *Id.* at § 2-22(a)(7) (amending O.C.G.A. § 15-9-127(a)(7)).

66. O.C.G.A. § 53-12-6(a) (2021).

67. Ga. H.R. Bill 865 § 2-22(b)(1) (amending O.C.G.A. § 15-9-127).

68. The Georgia Power of Attorney Act is contained in title 10, chapter 6B of the Official Code of Georgia Annotated.

69. Ga. H.R. Bill 865 § 2-22(a)(5)–(6) (adding O.C.G.A. § 15-9-127(a)(5)–(6)).

70. O.C.G.A. § 10-6B-2(9) (2021).

71. O.C.G.A. § 10-6B-2(1) (2021).

72. Power of attorney is discussed in Mary F. Radford, GEORGIA GUARDIANSHIP AND CONSERVATORSHIP § 1-23 (2021–22 ed.).

73. Those who may petition the court are: "[t]he principal or agent;" a "person asked to accept the power of attorney;" "[a] guardian, conservator, personal representative or other fiduciary acting for the principal or the principal's estate;" "[t]he principal's spouse, parent or descendant;" a principal's qualifying presumptive heir; a named beneficiary of the principal's trust or estate; a government agency that has the authority to protect the principal's welfare; or the principal's caregiver or another who has sufficient interest in the principal's welfare. O.C.G.A. § 10-6B-16(a) (2021).

74. O.C.G.A. § 10-6B-40(a) (2021).

75. O.C.G.A. § 10-6B-40(i).

Amendments give those probate courts that have expanded jurisdiction the authority to hear these types of petitions.

The 2021 Amendments also enlarged the jurisdiction of those probate courts that do not have expanded jurisdiction to include two additional types of cases. First, the 2021 Amendments allow all probate courts to order DNA testing on the remains of a decedent and any party in interest for the purpose of determining the statistical likelihood of kinship.[76] This authority, which is concurrent with the superior courts, includes the authority to order the disinterment of the remains of the decedent. Such an action may be necessary in order to determine who are the legal heirs of the decedent.[77] Second, the 2021 Amendments allow all probate courts to approve settlement agreements that provide probate will be granted or denied or a decedent's property will be distributed in a manner that is contrary to the terms of the will.[78] Jurisdiction over a settlement agreement may be exercised by the probate court or by a superior court upon appeal or transfer from the probate court.[79]

C. Amendments Relating to Wills and Probate

1. Separate Documents Made Part of the Will

Typically, the terms of a will are contained in one document that is signed by the testator and attested by two witnesses. The common law doctrine of "incorporation by reference" allows a testator to make the terms of another existing document a part of the will by referencing that document in the will.[80] The 2021 Amendments added O.C.G.A. § 53-4-4, which codifies the common law doctrine of incorporation by reference.[81] O.C.G.A. § 53-4-4(a) allows an extrinsic document to be incorporated by reference into a will provided the writing is in existence when the will is executed, the will manifests an intent to incorporate the document, and the document is described sufficiently to permit its identification.[82]

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76. Ga. H.R. Bill 865 § 1-3(a) (amending O.C.G.A. § 53-2-27).

77. The procedure for determining the identity of or interest of an heir is discussed in Mary F. Radford, REDFEARN WILLS AND ADMINISTRATION IN GEORGIA § 9:6 (2021–22 ed.).

78. Ga. H.R. Bill 865 § 1-24(b) (amending O.C.G.A. § 53-5-25).

79. O.C.G.A. § 53-5-25(a)(1) (2021).

80. For example, O.C.G.A. § 53-12-263(a) allows a testator to incorporate by reference into the will any or all of the fiduciary powers that are listed in O.C.G.A. § 53-12-261.

81. Ga. H.R. Bill 865 § 1-13. Subsection b provides: "This Code section shall not be construed to imply that the common law does not permit the incorporation of an extrinsic document into a will by reference in the manner authorized under subsection (a) of this Code section." O.C.G.A. § 53-4-4(b).

82. O.C.G.A. § 53-4-4(a) (2021).

The 2021 Amendments also added new O.C.G.A. § 53-4-5, which permits a testator to use a separate writing or list to dispose of certain items of property rather than include the list in the will itself.[83] Whereas a document that is incorporated by reference must be in existence at the time the will is executed, a writing under this latter statute may be prepared after the will has been executed and need only be in existence when the testator dies.[84] The new code section applies only to the disposition of tangible personal property (other than money) that is not otherwise specifically addressed in the will itself.[85] The writing must be one that: "(1) [i]s signed and dated by the testator; (2) [d]escribes the items and the beneficiaries with reasonable certainty; and (3) [i]s referred to in the testator's will."[86] The writing may be amended after it is prepared provided it is again signed and dated by the testator.[87] A writing such as this would allow a testator to dispose of items of personal property that are acquired after the will execution without having to make a formal amendment to the will with each new acquisition.

2. Who May Offer a Will for Probate?

O.C.G.A. § 53-5-2(b) provides that an executor, if one is named in the will, has the first right to offer the will for probate.[88] However, if no executor is named or the named executor fails to offer the will for probate, any "interested person" may offer the will for probate.[89] The 2021 Amendments added an expansive definition of the term "interested person" to include:

> [A]ny heir of the decedent; legatee, devisee, or beneficiary under the will; creditor of the decedent; purchaser from an heir of the decedent; administrator or temporary administrator appointed for the estate of the decedent prior to the discovery of the will; trustee or beneficiary of a testamentary trust established by the will or of a trust to which the will makes a devise or bequest; and individual making a claim under, or having standing to caveat to the probate of, an earlier will. An agent, conservator, guardian, guardian ad litem, or other fiduciary or appropriate representative of such an interested person may act on such interested person's behalf.[90]

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83. Ga. H.R. Bill 865 § 1-13.
84. O.C.G.A. § 53-4-5(b)(3) (2021).
85. O.C.G.A. § 53-4-5(a) (2021).
86. O.C.G.A. § 53-4-5(b) (2021).
87. O.C.G.A. § 53-4-5(b)(3) (2021).
88. O.C.G.A. § 53-5-2(b) (2021).
89. *Id.*
90. Ga. H.R. Bill 865 § 1-17(a).

3. Notice

Before a will can be admitted to probate in solemn form,[91] certain persons must have received notice that a petition to probate the will has been filed.[92] These persons are then given a time period within which they must file any objections they have to the probate of the will.[93] The 2021 Amendments lengthened that time period from ten days to thirty days.[94]

4. Conclusiveness of Probate

In 2018, the Georgia Court of Appeals in the case of *In re Estate of Jones,*[95] injected substantial confusion into the question of when the admission of a will to probate in solemn form becomes conclusive when it held that an individual who had not received notice of the petition to probate was not precluded from bringing an action to vacate the probate.[96]

The 2021 Amendments amended O.C.G.A. § 53-5-20[97] to bring clarity and certainty to this issue.[98] The amended provision addresses the conclusiveness of solemn form probate as it pertains to three categories of persons: (1) those who actually received adequate notice of the probate proceeding[99] as well as the will beneficiaries; (2) those who were required to receive notice but were not adequately notified; and (3) all other persons.[100] Probate in solemn form is effective immediately for those persons in the first category.[101] For those in the second category, probate in solemn form is not conclusive for four years.[102] For persons in the third

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91. Probate in solemn form is discussed in detail in Mary F. Radford, REDFEARN WILLS & ADMINISTRATION IN GEORGIA § 6:13 (2020–21 ed.).

92. O.C.G.A. § 53-5-22(a) (2021) requires that notice be given to the testator's heirs and to the beneficiaries and propounders of any other purported will of the testator for which probate proceedings are pending in Georgia.

93. *Id.*

94. Ga. H.R. Bill 865 § 1-23 (amending O.C.G.A. § 53-5-22(a)).

95. 346 Ga. App. 877, 815 S.E.2d 599 (2018). This case is described in detail in Mary F. Radford, *Wills, Trusts, Guardianships, and Fiduciary Administration*, 71 MERCER L. REV. 327, 327–30 (2019).

96. *Jones*, 346 Ga. App. at 878, 881, 815 S.E.2d at 600, 601.

97. O.C.G.A. § 53-5-20 (2021).

98. Ga. H.R. Bill 865 § 1-21.

99. This category includes those who waive notice or receive notice through a guardian *ad litem* or other person. O.C.G.A. § 53-5-20(a) (2021).

100. O.C.G.A. § 53-5-20 (2021).

101. O.C.G.A. § 53-5-20(a) (2021).

102. O.C.G.A. §§ 53-5-16, 53-5-19; O.C.G.A. § 53-5-20(b) provides that, for these persons, "a proceeding to probate in solemn form shall otherwise be as conclusive as if probate had been in common form." *Id.* Probate in common form does not require notice to anyone but

category, probate in solemn form is conclusive six months from the date on which the will is admitted to probate.[103] This amendment would thus set a clear time limit beyond which persons are not allowed to file a petition to vacate or set aside the admission of a will to probate in solemn form.

The *Jones* case also raised a question as to the grounds upon which a probate court could set aside or vacate its order admitting a will to probate.[104] Prior to the 2021 Amendments, O.C.G.A. § 53-5-50 gave the probate court original jurisdiction to "vacate, set aside, or amend its order admitting a will to probate" if another will or a codicil to the admitted will is entitled to be admitted to probate.[105] The 2021 Amendments added to O.C.G.A. § 53-5-50 those provisions from the Civil Practice Act[106] that allow a court to set aside a judgment on the grounds of lack of personal or subject matter jurisdiction; fraud, accident, mistake or actions by the adverse party that are not mixed with negligence or fault of the party moving to set aside; and a non-amendable defect on the face of the pleadings.[107]

5. *In terrorem* Clauses

In order to discourage will beneficiaries from challenging the provisions of the will, testators sometimes include an "*in terrorem*" or "no-contest" clause[108] that provides that, in the event any beneficiary attacks the validity of the will, that beneficiary's testamentary gift is to be forfeited.[109] Georgia case law indicates, however, that if the beneficiary's resort to the courts is for the purpose of ascertaining doubtful rights under the will or of learning how far other interests might be affected by it, and not for the purpose of destroying the will or any of its provisions, the *in terrorem* clause does not cause the forfeiture of that beneficiary's

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is not conclusive for four years. *Id.* For a discussion of probate in common form, *see* Mary F. Radford, REDFEARN: WILLS & ADMINISTRATION IN GEORGIA § 6:12 (2020–21 ed.).

103. O.C.G.A. § 53-5-20(c) (2021).

104. 346 Ga. App. at 878, 815 S.E.2d at 599–600.

105. Ga. H.R. Bill 865 § 1-26.

106. The provisions appear at O.C.G.A. § 9-11-60(d).

107. Ga. H.R. Bill 865 § 1-26. New O.C.G.A. § 53-5-52 sets varying time limits for the filing of petitions to set aside, vacate, or amend an order admitting a will to probate. Ga. H.R. Bill 865 § 1-28.

108. *See* discussion of cases involving *in terrorem* clauses *supra* Section I(A).

109. These clauses are discussed in detail in Mary F. Radford, REDFEARN: WILLS & ADMINISTRATION IN GEORGIA § 8:7 (2020–21 ed.) and in Mary F. Radford, GEORGIA TRUSTS AND TRUSTEES § 2:1 (2020–21 ed.).

interest.[110] The 2021 Amendments codified this concept by providing that such a clause will not be enforceable against a person who is bringing a cause of action for "interpretation or enforcement of a will; . . . an accounting, for removal, or for other relief against a personal representative;" or who is "[e]ntering into a settlement agreement."[111]

D. Amendments Relating to Year's Support Statutes

Under Georgia law, the surviving spouse and minor children of a decedent are entitled to an allowance out of the estate of the decedent, which is referred to as a "year's support."[112] The 2021 Amendments clarified that an award of year's support takes precedence over all other debts of and demands on the decedent's estate "notwithstanding any other provision of law to the contrary[.]"[113] The 2021 Amendments also made it clear that a decedent's children by any individual other than the surviving spouse shall be entitled to a separate portion of the year's support award that will vest in those children.[114] If an award of year's support is granted but then appealed, during the pendency of the appeal, the petitioners are entitled to be furnished with "necessaries" as allowed by the probate court.[115] In the event there is no personal representative[116] of the estate to furnish these necessaries, the 2021 Amendments allow for the appointment of a temporary administrator[117] to perform this act.[118]

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110. *See*, *e.g.*, Sinclair v. Sinclair, 284 Ga. 500, 502, 670 S.E.2d 59, 61 (2008) ("[I]t would violate public policy to construe the condition *in terrorem* so as to require the forfeiture of a beneficiary's interest if the beneficiary brings an action for accounting or the removal of the executor.")

111. Ga. H.R. Bill 865 § 1-15 (amending O.C.G.A. § 53-4-68). The 2021 Amendments added the same provision to the statute relating to *in terrorem* clauses that appear in trusts. Ga. H.R. Bill 865 § 1-74 (amending O.C.G.A. § 53-12-22).

112. *See* O.C.G.A. §§ 53-3-1, 53-3-21. For an in-depth discussion of year's support, *see* Mary F. Radford, REDFEARN: WILLS & ADMINISTRATION IN GEORGIA, Ch. 10 (2020–21 ed.)

113. Ga. H.R. Bill 865 § 1-4 (amending O.C.G.A. § 53-3-1).

114. Ga. H.R. Bill 865 § 1-9 (amending O.C.G.A. § 53-3-8). Prior to the amendment this separate award was available only to minor children of a different "spouse" of the decedent. *Id*.

115. O.C.G.A. § 53-3-7(b) (2021).

116. A "personal representative" is defined in O.C.G.A. § 53-1-2(12) as "any administrator, administrator with the will annexed, county administrator, or executor."

117. Ga. H.R. Bill 865 § 1-32. A "temporary administrator" is appointed by the probate court to perform certain limited duties for an unrepresented estate. O.C.G.A. §§ 53-6-30–31.

118. Ga. H.R. Bill 865 § 1-12 (adding new O.C.G.A. § 53-3-21).

E. Amendments Relating to Judicial and Nonjudicial Settlements

The parties to a dispute relating to a will or trust may choose to enter into a settlement agreement. This settlement agreement may be private (nonjudicial settlement) or one that is approved by a court (judicial settlement).[119] The 2021 Amendments added provisions to the Georgia Probate Code that describe the circumstances under which a nonjudicial settlement agreement is binding on interested parties.[120] New O.C.G.A. § 53-5-27 provides that the agreement must "not violate a material intention of the testator[.]"[121] The agreement must be one that could be approved as a judicial settlement under O.C.G.A. § 53-5-25[122] and will have the same binding effect as if so approved.[123]

The 2021 Amendments refined O.C.G.A. § 53-12-9, which covers nonjudicial settlement agreements relating to trust matters.[124] The revised Code section specifically names trustees and trust directors as those who, along with "other persons whose interests [may] [] be affected[,]"[125] to enter into nonjudicial settlement agreements on trust matters that are binding.[126] Similarly to settlement agreements relating to wills, the agreement must "not violate a material purpose of the trust."[127] If the settlement agreement deals with the modification or termination of an irrevocable trust, the revised code section clarifies that the agreement will not be valid if the settlor's consent would be required under O.C.G.A. § 53-12-61(b).[128] O.C.G.A. § 53-12-61 sets out the circumstances under which an irrevocable trust may be modified or terminated during the lifetime of the settlor[129] of the trust.[130]

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119. As described above, the term "court" includes a superior court and any probate court, regardless of whether the probate court has expanded jurisdiction. *See supra* Part II(B).

120. Ga. H.R. Bill 865 § 1-25(c) (adding new O.C.G.A. § 53-5-27). A similar provision covering nonjudicial settlement agreements of trust matters already existed in the Georgia Trust Code at O.C.G.A. § 53-12-9.

121. O.C.G.A. § 53-5-27(b) (2021).

122. *Id.* (citing O.C.G.A. § 53-5-25).

123. O.C.G.A. § 53-5-27(c).

124. Ga. H.R. Bill 865 § 1-73 (amending O.C.G.A. § 53-12-9).

125. *Id*. Prior to the amendment, the code section did not include "trust director."

126. O.C.G.A. § 53-12-9(a) (2021). The revised Code section allows trustees, trust directors, and the other interested persons to petition a court for an expanded list of orders including approval of the agreement itself and determinations as to whether the requirements of the Code section were met. O.C.G.A. § 53-12-9(c).

127. Ga. H.R. Bill 865 § (b)(1).

128. O.C.G.A. § 53-12-9(b)(2).

129. The "settlor" of a trust is the person who created the trust. O.C.G.A. § 53-12-2(11) (2021).

130. O.C.G.A. § 53-12-61(a)–(b) (2021).

For judicial settlements of matters relating to wills, the 2021 Amendments added notice provisions to O.C.G.A. § 53-5-25[131] as well as the requirement that all "interested persons" give consent.[132] The 2021 Amendments also repealed the requirement that a hearing be held prior to the granting of court approval, leaving the holding of the hearing, as well as the extent to which additional notice is needed, to the discretion of the court.[133]

F. Amendments Relating to Trusts

1. Representation

O.C.G.A. § 53-12-8 of the Georgia Trust Code, as amended in 2018,[134] describes those persons who can receive notice, give consents, and otherwise bind persons who are unborn, not *sui juris*, or unknown on trust matters.[135] For example, if there is no conflict of interest between the representative and the person represented, an ancestor can represent a descendant who is not yet born or who is still a minor if there has been no guardian or conservator appointed for that person.[136] Also, a trustee can represent and bind the trust beneficiaries.[137] The 2021 Amendments expanded and refined this code section.[138] The 2021 Amendments added to the list of those who can represent others in trust matters: (1) trust directors, who are authorized to "represent and bind the beneficiaries of the trust on a question or dispute relating to the trust director's powers of direction"; and (2) persons who are specifically named in the trust instrument to represent a beneficiary.[139]

The 2021 Amendments added new subsection (j) to O.C.G.A. § 53-12-8. This subsection allows the representative of one person also to represent any person who could be represented by the person who is being

131. Ga. H.R. Bill 865 § 1-24 (amending O.C.G.A. § 53-5-25(b)) (requiring that the personal representative or temporary administrator receive notice prior to the court approval).

132. Ga. H.R. Bill 865 § 1-24 (amending O.C.G.A. § 53-5-25(b)). "Interested persons" are defined as "all persons whose interests would be affected by the approval of" the settlement agreement. Ga. H.R. Bill 865 § 1-24 (adding O.C.G.A. § 53-5-25(a)(2)).

133. Ga. H.R. Bill 865 § 1-24 (amending O.C.G.A. § 53-5-25(d)).

134. This amendment is described in Mary F. Radford, *Wills, Trusts, Guardianships, and Fiduciary Administration*, 70 MERCER L. REV. 275, 277–78 (2018).

135. O.C.G.A. § 53-12-8 (2021).

136. O.C.G.A. § 53-12-8(f)(8).

137. O.C.G.A. § 53-12-8(f)(4).

138. Ga. H.R. Bill 865 § 1-72 (amending O.C.G.A. § 53-12-8).

139. Ga. H.R. Bill 865 § 1-72 (amending O.C.G.A. § 53-12-8(f)(5)–(6)).

represented if that person were alive and *sui juris*.[140] So, for example, a guardian who is representing a ward (as allowed by O.C.G.A. § 53-12-8(f)(2))[141] may also represent the descendants of that ward who are not *sui juris* because if the ward were, in fact, *sui juris*, she, as an ancestor, is authorized by O.C.G.A. § 53-12-8(f)(8)[142] to represent her descendants. Again, there must be no conflict of interest between the representative and all the persons who are being directly or indirectly represented.[143]

2. Modification of Trusts

Subsections (b) and (c) of O.C.G.A. § 53-12-61 require a court, under certain circumstances, to approve the modification or termination of an irrevocable trust upon the unanimous consent of the beneficiaries and the settlor, if the settlor is still alive.[144] Prior to the 2021 Amendments, the consent of all of the beneficiaries was required.[145] The 2021 Amendments narrowed the class of those whose consent is required to the "qualified" beneficiaries.[146] The 2021 Amendments clarified petitioning for or consenting to a modification or termination would not be a violation of a condition *in terrorem* that appeared in the trust.[147] The 2021 Amendments also explained in detail the role of a trustee when a petition for modification or termination is filed.[148] The trustee is required to receive notice of the petition unless the trustee waives notice.[149] The trustee has standing to intervene as a matter of right when the petition is filed but only for the purpose of showing that one of the statutory prerequisites for granting the modification or termination has not been

140. Ga. H.R. Bill 865 § 1-72 (amending O.C.G.A. § 53-12-8). There must be no conflict of interest between the representative and the other persons who are being represented. *Id.*

141. O.C.G.A. § 53-12-8(f)(2).

142. O.C.G.A. § 53-12-8(f)(8).

143. O.C.G.A. § 53-12-8(f).

144. O.C.G.A. § 53-12-61(b)–(c) (2021).

145. Ga. H.R. Bill 865 § 1-76(b).

146. *Id.* (amended by O.C.G.A. § 53-12-61(b)–(c)). O.C.G.A. § 53-12-2(10) defines a "qualified beneficiary" as

> [A] living individual or other existing person who, on the date of determination of beneficiary status: (A) Is a distributee or permissible distributee of trust income or principal; (B) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) of this paragraph terminated on that date without causing the trust to terminate; or (C) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

147. Ga. H.R. Bill 865 § 1-76 (adding new subsection (l) to O.C.G.A. § 53-12-61).

148. *Id.*

149. *Id.* (adding new subsection (m)(1)(A) to O.C.G.A. § 53-12-61).

fulfilled.[150] The 2021 Amendments added comprehensive provisions about the notice required when a petition for modification or termination is filed[151] and clarified that the court may, but is not required to, hold a hearing on a petition for modification or termination if no one objects to or intervenes in the proceeding.[152]

3. Charitable Trusts

Prior to the 2021 Amendments, Georgia case law recognized that some trusts might be "mixed trusts" because they had both charitable and noncharitable beneficiaries.[153] This concept was also recognized in O.C.G.A. § 53-12-170(c), which spoke of a settlor establishing a trust "for both charitable and noncharitable purposes[.]"[154] The 2021 Amendments established that a "charitable trust," for purposes of Georgia law, is one in which the trust property is to be used "exclusively for charitable purposes."[155] The 2021 Amendments deleted the term "noncharitable trust,"[156] where it appeared in the Georgia Trust Code and then clarified which provisions of the Georgia Trust Code are not applicable to charitable trusts.[157] These provisions include those allowing the modification of trusts upon the unanimous consent of the trust beneficiaries and the settlor (if the settlor is still alive)[158] and those relating to the distribution of the assets of one trust into another trust.[159]

4. Definition of "Creditors"

O.C.G.A. § 53-12-80 through § 53-12-82 address the ability of a settlor to restrict access to the trust assets by creditors of a beneficiary or the

150. Ga. H.R. Bill 865 § 1-76 (adding new subsection (m)(1)(A)(ii) to O.C.G.A. § 53-12-61). The statutory prerequisites for granting the petition for modification or termination if the settlor is still alive are that the settlor and all the qualified beneficiaries have consented, and the trustee has received notice. O.C.G.A. § 53-12-61(b) (2021). If the settlor is dead, in addition to the consent and notice requirements, the court must also determine that the proposed modification does not violate a material provision of the trust or that it is not necessary that the trust be continued in order to achieve a material purpose of the trust. O.C.G.A. § 53-12-61(c) (2021).

151. *Id.* (adding new subsection (m)(1)(B) to O.C.G.A. § 53-12-61).

152. *Id.* (adding new subsection (n) to O.C.G.A. § 53-12-61).

153. *See, e.g.*, Glass v. Faircloth, 354 Ga. App. 326, 330, 840 S.E.2d 724, 728 (2020).

154. Ga. H.R. Bill 865 § 1-80 (repealing O.C.G.A. § 53-12-170(c)).

155. Ga. H.R. Bill 865 § 1-80 (amending O.C.G.A. § 53-12-170(a)).

156. Ga. H.R. Bill 865 § 1-76 (amending O.C.G.A. § 53-12-61).

157. *Id.* (adding new subsection (k) to O.C.G.A. § 53-12-61).

158. *Id.* (amending O.C.G.A. § 53-12-61).

159. Ga. H.R. Bill 865 § 1-77 (amending O.C.G.A. § 53-12-62).

settlor.[160] In 2014, in *Morris v. Morris*,[161] the Georgia Court of Appeals stated the term "creditor," when used in O.C.G.A. § 53-12-82, applied only to one who holds a claim in contract and not to one who holds a claim based on a tort judgment.[162] The 2021 Amendments clarified that the term "creditors," as used in O.C.G.A. § 53-12-82, includes those creditors who are listed in O.C.G.A. § 53-12-80(d).[163] O.C.G.A. § 53-12-80(d), which describes a narrow class of claims whose holders may have limited access to the beneficiary's interest in the trust, includes "tort judgments."[164]

5. Trustee Compensation

Prior to the 2021 Amendments, O.C.G.A. § 53-12-210 allowed all the qualified beneficiaries of a trust, by unanimous agreement, to set or modify the trustee's compensation schedule without receiving the approval of a court.[165] The 2021 Amendments added to this code section the requirement that the trustee also be part of this agreement.[166]

6. Investment and Management of Trust Assets

The 2021 Amendments clarified, in investing and managing the assets of a trust, the trustee must comply with the prudent investor provisions that appear in Article XVI of Chapter 12 of Title 53.[167] The 2021 Amendments also refined this prudent investor rule, which appears in O.C.G.A. § 53-12-340.[168] The provisions of this statute were revised to more closely follow those in the Uniform Prudent Investor Act (UPIA) that was promulgated by the Uniform Law Commission in 1994.[169] For example, as modified by the 2021 Amendments, the general rule of subsection (a) of O.C.G.A. § 53-12-340 now provides "[a] trustee shall invest and manage trust assets as a prudent investor would by considering the purposes, provisions, distribution requirements, and

160. O.C.G.A. §§ 53-12-80–82 (2021).

161. 326 Ga. App. 378, 756 S.E.2d 616 (2014). This case is described in detail in Mary F. Radford, *Wills, Trusts, Guardianships, & Fiduciary Administration*, 66 MERCER L. REV. 231, 242–43 (2014).

162. *Id.* at 384, 756 S.E.2d at 621 (referring to O.C.G.A. § 53-12-82).

163. Ga. H.R. Bill 865 § 1-79 (amending O.C.G.A. § 53-12-82).

164. O.C.G.A. § 53-12-80(d)(3) (2021).

165. Ga. H.R. Bill 865 § 1-81 (amending O.C.G.A. § 53-12-210).

166. *Id.*

167. Ga. H.R. Bill 865 § 1-82 (amending O.C.G.A. § 53-12-241).

168. Ga. H.R. Bill 865 § 1-86 (amending O.C.G.A. § 53-12-340).

169. *Id.*; *see* Uniform Prudent Investor Act (Unif. L. Comm'n 1994).

other circumstances of the trust."[170] The 2021 Amendments also added subsection (d) to O.C.G.A. § 53-12-340 that allows a trustee who is investing trust assets to take into consideration "the personal values of the beneficiaries, including but not limited to a desire to engage in investing strategies that align with social, political, religious, philosophical, environmental, governance, or other values or beliefs of the beneficiaries."[171]

7. Amendments Relating to Trust Directors

The Georgia Trust Code was amended in 2018 to add a new Article 18 that deals with trust directors.[172] A trust director is defined as:

> [A] person that is granted a power of direction by a trust to the extent the power is exercisable in a capacity other than as a trustee, regardless of whether the trust instrument refers to such person as a trust director and regardless of whether the person is a beneficiary or settlor of the trust.[173]

The 2021 Amendments refined, clarified, and reorganized many of the provisions in this Article.[174] The highlights of this revision are described in this paragraph. New subsection (a) of O.C.G.A. § 53-12-506 describes who may serve as a trust director, providing basically that an individual may serve regardless of citizenship or residency while an entity may serve only if it "ha[s] the power to act as a trustee in Georgia."[175] O.C.G.A. § 53-12-503 covers the duties and liabilities of a trust director.[176] New subsection (b) of this Code section clarifies the different liability of a trust director who holds the power of direction individually as opposed to one who holds the power of direction jointly with the trustee or another trust director.[177] New subsection (c) of this Code section clarifies **"**[e]xcept as otherwise provided in the trust instrument, a trust director shall not

170. O.C.G.A. § 53-12-340(a). Section 2(a) of the UPIA articulates the standard of investing as **"**a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust.**"**

171. Ga. H.R. Bill 865 § 1-86 (amending O.C.G.A. § 53-12-340(d)).

172. Ga. H.R. Bill 121, Reg. Sess. at § 25 (2018) (codified at O.C.G.A. §§ 53-12-500–506). Trust directors are discussed in depth in Mary F. Radford, GEORGIA TRUSTS AND TRUSTEES § 11:5 (2020–21 ed.).

173. O.C.G.A. § 53-12-500(4) (2021).

174. Ga. H.R. Bill 865 §§ 1-88–92 (amending O.C.G.A. §§ 53-12-500–506).

175. Ga. H.R. Bill 865 § 1-92 (amending O.C.G.A. § 53-12-506). The words of this new subsection mirror those in O.C.G.A. § 53-12-200, which describes who may serve as a trustee in Georgia.

176. O.C.G.A. § 53-12-503 (2021).

177. Ga. H.R. Bill 865 § 1-90 (adding new subsection (b) to O.C.G.A. § 53-12-503).

have the duties imposed by Code section 53-12-242 [the duty to inform beneficiaries of the existence of the trust] and subsection (b) of Code section 53-12-243 [the duty to account annually to the beneficiaries]"[178] O.C.G.A. § 53-12-504 deals with the duties and liabilities of a directed trustee.[179] The 2021 Amendments amended subsection (a) of this Code section to emphasize that a directed trustee must not obey a trust director's direction if doing so "would clearly constitute an act committed in bad faith."[180]

178. O.C.G.A. §§ 53-12-242 (2021); O.C.G.A. 53-12-243 (2021); Ga. H.R. Bill 865 § 1-90 (adding new subsection (c) to O.C.G.A. § 53-12-503).

179. O.C.G.A. § 53-12-504 (2021).

180. Ga. H.R. Bill 865 § 1-91 (amending O.C.G.A. § 53-12-504).